

Guidance Note: Natural Persons carrying on a single class of Trust Company Business

Application Process and Ongoing Regulatory Requirements

February 2009

Glossary

applicant	means a person who intends to carry on trust company business and who has made an application to the JFSC to be registered under Article 9 of the Financial Services (Jersey) Law 1998 (the FS(J)L).
CDD	means customer due diligence
the Commission/the JFSC	means the Jersey Financial Services Commission
D&O	means Directors and Officers
the FS(J)L	means the Financial Services (Jersey) Law 1998
the Money Laundering Order	means the Money Laundering (Jersey) Order 2008
PII	means Professional Indemnity Insurance
registered person	means a person registered by the JFSC under Article 9 of the FS(J)L to carry on trust company business. For the purposes of this guidance note the terms “natural person” and “individual” and “sole trader” will have the same meaning as “registered person”.
the TCB – IB Accounts Order	means the Financial Services (Trust Company and Investment Business (Accounts, Audit and Reports)) (Jersey) Order 2007
TCBEs	means trust company business employees
the TCB Code	means the Code of Practice for Trust Company Business

1 Introduction

- 1.1 The regulatory framework for trust company business includes some classes of business, which may be provided by a natural person e.g. acting as director, company secretary, trustee or nominee shareholder. Where this is the case, a number of the regulatory requirements cannot be applied to a registered person that is not a corporate entity.
- 1.2 Accordingly, the purpose of this guidance note is to:

- 1.2.1 offer clarity to registered persons that are natural persons considering making an application to carry on a single class of trust company business; and
- 1.2.2 set out the ongoing expectations of the Jersey Financial Services Commission (the **JFSC**) should a registration be granted.

2 Application Stage

2.1 General requirements for all Classes of trust company business

- 2.1.1 The applicant should contact the Population Office before they submit their application to the JFSC in order to ascertain if Regulation of Undertakings approval is required.
- 2.1.2 Article 9 of the FS(J)L sets out the grounds on which the JFSC may refuse to register a person, which include where the JFSC is not satisfied that the person is fit and proper by having regard to the integrity, competence, financial standing, structure and organisation of an applicant.
- 2.1.3 Prior to the submission of the necessary documentation, the JFSC would be happy to meet with the applicant to discuss their plans, the application process and the on-going requirements of a registered person.
- 2.1.4 The applicant should submit the following to the JFSC:
 - 2.1.4.1 a completed application form for trust company business;
 - 2.1.4.2 a cheque payable to the 'Jersey Financial Services Commission' in respect of the application fee and the registration fee; and
 - 2.1.4.3 a business plan to include details of how the applicant proposes to conduct trust company business, potential appointments and any other additional information relevant to the application.
- 2.1.5 Paragraphs 2.2 to 2.5 set out the areas the JFSC will take into account when considering the application. The areas vary dependent upon the class of business for which an application has been made.

2.2 Glass G – Director

Span of Control

- 2.2.1 One of the guiding principles of the JFSC is to have regard to the reputation of Jersey. The JFSC would therefore want to ensure that should a natural person in any way become incapacitated, customers' interests are not prejudiced. Accordingly, the JFSC would normally attach a condition to the registration stating that the registered person may not act as a sole director without the prior consent of the JFSC.

Control of Customer Assets

- 2.2.2 The JFSC would include a condition to the registration restricting the registered person from controlling customer assets in a sole capacity without the prior consent of the JFSC.

Financial Resources

- 2.2.3 Section C, question 3 of the application form requests information regarding financial resources, the JFSC would expect the response to questions 3.1 to include a statement that an applicant has, and is able to maintain, personal unencumbered net liquid assets amounting to at least £25,000. In terms of proof, the JFSC anticipates that in most circumstances a copy bank statement will provide this.

- 2.2.4 The applicant should also be able to demonstrate that they have a track record which shows they have been able to meet their liabilities as they have fallen due. The JFSC does not expect there to be any detrimental financial information on the applicant by way of County Court Judgments or Petty Debt judgments, other than with explanation the JFSC considers reasonable in the light of the circumstances. Completion of Section D of the application form will provide this information to the JFSC.

Professional Indemnity Insurance

- 2.2.5 Section C, question 5 of the application form requests information regarding insurance arrangements, the JFSC would expect the applicant to make a statement in their application explaining how the financial implications of their personal liability to the company/creditors/customers are to be met. For example, by their own PII cover, company policy or policy of any fully registered trust company business with which they may have entered into an arrangement.
- 2.2.6 Those natural persons intending to carry on roles often described as “non-executive” or “independent” director, will, in the main, need to consider Directors and Officers (D&O) cover. In this regard, the JFSC would expect natural persons to either have their own D&O cover extending to cover each board appointment, or to ensure that they have the benefit of D&O cover through each of the companies for which they act, or indeed a combination of both.
- 2.2.7 In addition to ensuring that their D&O exposures are protected, as described in 2.2.6 above, the JFSC would expect those natural persons who have more executive responsibilities, such as having signatory powers over bank accounts or controlling other customer assets, in a joint capacity, to ensure that their activities are covered by PII. PII cover for natural persons with more executive responsibility is typically achieved via a policy arranged by the company to include all that company’s professional activities, including those of the natural persons acting as directors.
- 2.2.8 Where a person personally meets the PII requirements, the JFSC would accept a level of PII cover calculated on the same basis as the Codes of Practice for Trust Company Business (the **TCB Code**), but with minimum cover reduced to £1 million. Any excess over £20,000 must be notified to the JFSC.

Competence

- 2.2.9 The JFSC would expect an applicant that is a natural person to at least meet the Category A Trust Company Business Employee standard of qualification and years of experience as set out in the First Schedule to the TCB Codes.
- 2.2.10 Additionally, the JFSC would expect the person to comply with the Category A Trust Company Business Employee Continuing Professional Development requirements of the TCB Codes.

Exemptions from the Financial Services (Trust Company and Investment Business (Accounts, Audit and Reports)) (Jersey) Order 2007 (the TCB – IB Accounts Order)

- 2.2.11 The JFSC accepts that a natural person may not wish to have an audit undertaken and therefore would consider a request from the applicant to waive the TCB – IB Accounts Order requirement to:
- 2.2.11.1 appoint an Auditor (Article 3 of the TCB-IB Accounts Order) ; and
 - 2.2.11.2 submit audited financial statements to the JFSC (Article 9 of the TCB-IB Accounts Order).

- 2.2.12 All other sections of the TCB – IB Accounts Order, including submission of an annual declaration, will apply unless the applicant agrees further exemptions with the JFSC in accordance with Article 14 of the TCB-IB Accounts Order.

2.3 Class I – Company Secretary/Secretary to a Limited Liability Partnership

- 2.3.1 The guidance set out under 2.2 (Class G - Director) with regard to Financial Resources, PII, Competence, Control of Customer Assets and Exemptions to the TCB – IB Accounts Order apply to those individuals who may wish to register as company secretaries or as a secretary of a limited liability partnership.
- 2.3.2 In order to ensure that the customers' interests are not prejudiced in the event of the unforeseen resignation or incapacity of a company secretary or a secretary of a limited liability partnership, the applicant should include in their application form a statement that they undertake to act only where an alternate secretary has been named.

2.4 Class L – Trustee

- 2.4.1 The JFSC would expect an application to include a declaration that the applicant shall not undertake to act as trustee unless there is provision for a co-trustee to act with them.
- 2.4.2 The JFSC would take much comfort from an application that stated that the administration of the trusts for which the single applicant trustee acts, is carried out by a fully registered, six eyes controlled trust company business.
- 2.4.3 The guidance set out under 2.2 (Class G - Director) with regard to Financial Resources, PII, Competence, Control of Customer Assets and Exemptions to the TCB – IB Accounts Order apply to those individuals who may wish to register as trustee.

2.5 Class M – Nominee Shareholder

- 2.5.1 Individual persons shall not generally be granted authorisation to act as a nominee shareholder other than in exceptional circumstances. Exceptional circumstances might include the granting of a registration limited by a condition to extend to existing arrangements only, or under other circumstances where the JFSC's concerns regarding security of ultimate beneficial owners' interests could be met.
- 2.5.2 In such exceptional circumstances, the requirements set out under 2.2 (Class G - Director) with regard to Financial Resources, PII, Competence, Control of Customer Assets and Exemptions to the TCB – IB Accounts Order apply to those individuals who may wish to register as nominee shareholders.

3 On-going requirements of the registered person

- 3.1 The JFSC will require that the registered person should submit an Annual Registration Fee and Update Form - Sole Traders, which can be found on the JFSC's website. This form includes details of the registered person's income as it relates to their regulated activity.
- 3.2 The Annual Registration Fee and Update Form must be submitted to the JFSC by 31 January in each calendar year.
- 3.3 The Annual Registration Fee and Update Form includes a template declaration, as required by Article 5(1) of the TCB – IB Accounts Order. The declaration relates to compliance with the requirements of the FS(J)L, the Orders or TCB Codes issued under the FS(J)L and all legislation

and guidance to counter money laundering and the financing of terrorism. The registered person must sign the declaration and list any exceptions to the confirmations required. The Annual Declarations – Dear CEO letter of March 2012 provides further clarification of this requirement.

4 TCB Code requirements of a sole trader

To assist sole traders in effectively adhering to regulatory guidance such as the TCB Codes and AML Handbook, the following sections have been designed to provide sole traders with an understanding of the JFSC's expectations of sole traders' responsibilities under the Law.

- 4.1 **Section 1** – A registered person must conduct its business with integrity. The entirety of this section is applicable to sole traders.
- 4.2 **Section 2** – A registered person must have the highest regard for the interests of its customers. The entirety of Section 2 is applicable to each sole trader through diligence, transparency and appropriate record keeping.
- 4.3 **Section 3.1** of the TCB Codes is specifically geared towards corporate registered persons and appropriate corporate governance, which sole traders must adhere to when acting as a non-executive director on regulated entities.
- 4.4 **Section 3.1.2** makes useful references to ensuring the effective management of risk and contains points that a sole trader should be aware of both through their own registration and through their appointment to regulated entities.
- 4.5 **Section 3.2.1** contains a variety of requirements, those applicable to a sole trader being: establishing effective complaints handling complaints, procedures governing dual or multiple authorisations for handling trust company business assets, guarding against financial crime and ensuring that all transactions or decisions are undertaken by an appropriate individual.
- 4.6 **Section 3.2.2** can be applied in conjunction with Section 3.1.2 in terms of risk management and the recording of processes used to mitigate those risks.
- 4.7 **Section 3.2.3** can be adhered to through the implementation of effective controls to protect against loss of data.
- 4.8 **Section 3.2.4** makes reference to the AML Handbook and the Money Laundering Order and reiterates that it is a criminal offence not to comply with such legislation. This section is therefore applicable to all sole traders.
- 4.9 **Sections 3.2.7 to 3.2.17** apply guidance specific to classes of trust company business, consequently the JFSC only expects Class G sole traders to adhere to Section 3.2.8.
- 4.10 **Section 3.4** includes four points, which all describe the requirements of trust company business employees (**TCBEs**) to carry out adequate CPD. Though sole traders are the registered person in their own right, and are therefore not considered TCBEs, Section 3.4 is still applicable in that the JFSC expects 25 hours of CPD to be undertaken as a minimum by the sole trader.
- 4.11 **Section 3.5** sets out the requirements to appoint a Compliance Officer, MLCO and MLRO. Though these requirements are not applicable to a sole trader, it should be noted that under Part 1, Article 7(2) of the Money Laundering (Jersey) Order 2008 (the **Money Laundering**

Order), “a sole trader is the compliance officer in respect of his or her financial services business”. The JFSC therefore expects the requirements of a Compliance Officer under 3.5.3.1 to be adhered to by a sole trader.

- 4.12 **Section 3.6** requires a registered person to have established effective complaints handling systems and procedures. The JFSC would not expect a sole trader to have exhaustive formal written procedures in place, but would expect sole traders to have due regard to complaints made against both themselves and any regulated service providers with whom they act and be in a position to deal with any complaints in a reasonable manner should they arise.
- 4.13 **Section 3.7** provides a summary of the sections of the TCB Codes that require orderly records to be kept. The JFSC expects these requirements to be applied to the following areas of a sole trader’s business; business acceptance, risk rating and periodic reviews, business risk assessment and retention of board minutes.
- 4.14 **Section 4** is applicable in its entirety.
- 4.15 **Section 5.3.2** is applicable as defined under section 2.2.3 of this guidance note.
- 4.16 **Section 5.8** is applicable as defined under section 2.2.5, 2.2.6 and 2.2.7 of this guidance note.
- 4.17 **Sections 6 and 7** are both applicable in their entirety to a sole trader.

5 AML Handbook requirements of a sole trader

- 5.1 **Section 2.3 (10), (11) and (12)** requires a registered person to conduct and document a business risk assessment. The JFSC would expect each sole trader to produce a business risk assessment bespoke to their services and customers. The JFSC would expect a business risk assessment to include, but not necessarily be limited to, the following areas:
 - 5.1.1 Operational Risks, acknowledging anti-money laundering legislation, regulatory legislation, as well as data protection laws;
 - 5.1.2 Economic and market exposures;
 - 5.1.3 Geographical risks, including sanctions;
 - 5.1.4 Reliance being placed on regulated service providers; and
 - 5.1.5 The risk of money laundering risk at customer company level.
- 5.2 **Section 2.4 (26)(a)** requires that a registered person applies customer due diligence (**CDD**) policies and procedures that include the development of clear customer acceptance policies and procedures. The JFSC expects a sole trader to have adopted a customer acceptance procedure to each of their potential appointments. Those customer acceptance procedures should include an initial risk assessment of the customer, as well as ensuring that the appropriate levels of CDD have been applied by the relevant service providers in Jersey. Point 27 of Section 2.4 states “In maintaining the required systems and controls, a relevant person must check that the systems and controls are implemented and operating effectively”. The JFSC considers that when a sole trader relies upon a regulated service provider to implement the necessary CDD measures, that sole trader must assess those procedures to satisfy themselves that the AML Handbook and the Money Laundering Order are being adhered to by the relevant parties.

- 5.3 **Section 3** sets out the minimum levels of CDD to be obtained on customers of any regulated financial business in Jersey. If a sole trader is providing services directly to a customer, without the joint involvement of a regulated service provider, Section 3 would be applicable to the sole trader in its entirety. Where there is the involvement of a regulated financial business in Jersey, a sole trader is only expected to monitor the levels and appropriateness of the CDD obtained on its customers at Board level, should a regulated service provider have collected said CDD.
- 5.4 **Section 4** can be adhered to in a similar approach to Section 3, in that the requirements will be dependent on whether CDD is collected personally by the sole trader, or through a regulated service provider.
- 5.5 **Section 5** can be adhered to through regular attendance at Board meetings and through retention of Board packs to ensure the activities of companies are actively monitored.
- 5.6 **Section 6** must be adhered to in its entirety and each sole trader must be acutely aware of its content.

ⁱ Fees relating to trust company business registration are detailed in the trust company business fees notice which can be found on the Commission's Website